

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:	)	
	)	
PROFESSIONAL TURF	)	Bankruptcy Case No. 99-90092
SPECIALTIES, INC.,	)	
	)	
Debtor.	)	
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	)	
PROFESSIONAL TURF	)	
SPECIALTIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary Case No. 99-9055
	)	
MULLIGAN' S CART and	)	
DANIEL FRANCIS,	)	
	)	
Defendants.	)	

OPINION

This matter having come before the Court for trial on the adversary Complaint filed by the Plaintiff on June 10, 1999; the Court having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The adversary Complaint filed by the Debtor/Plaintiff herein seeks to recover damages against Defendants, Mulligan's Cart and Daniel Francis, for breach of an Equipment Lease Agreement admitted into evidence a Plaintiff's Exhibit #1. There is no dispute by Defendant, Mulligan's Cart, that the Equipment Lease Agreement in question was breached by it and, therefore, judgment should be entered against Defendant, Mulligan's Cart, for damages

resulting from the breach of the agreement. Defendant, Daniel Francis, however, denies liability for the breach of the Equipment Lease Agreement, and the sole issue before the Court concerns whether Defendant, Daniel Francis, is liable personally as a result of his signature on the Equipment Lease Agreement, at Schedule B, under the heading of "Personal Guaranty."

There is no dispute that the alleged individual liability of the Defendant, Daniel Francis, is governed by Illinois law and that the burden of proof is upon the Plaintiff by a preponderance of the evidence to establish that there is an enforceable personal guaranty against Defendant, Daniel Francis, such that his personal assets could be reached to compensate the Plaintiff for damages resulting from the admitted breach of the Equipment Lease Agreement by the Lessee, Mulligan's Cart.

It has been held that, generally when a corporate officer signs a document indicating his corporate affiliation, absent some evidence to the contrary, the officer is not personally bound by his signature. Wottowa Insurance Agency, Inc. v. Bock, 104 Ill.2d 311, 472 N.E.2d 411 (1984). It is clear, under Illinois law, that personal guaranties are construed strictly against the party in whose favor they run. Any ambiguities in a personal guaranty, or in the document in which it is contained, are construed against the party who prepares the document. See: International Paper Company v. Grossman, 541 F.Supp. 1236 (D.C. N.D. Ill. 1982) *citing* Telegraph Savings & Loan Ass'n. v. Guaranty Bank & Trust Co., 67 Ill.App.3d 790, 385 N.E.2d 97 (1st Dist. 1978), and Fannin State Bank v. Grossman, 30 Ill.App.2d 484, 175 N.E.2d 268 (1st Dist. 1961).

In reviewing all of the evidence presented at trial, both testimonial and documentary, the Court must conclude that the Plaintiff has failed to meet its burden of proof to show that the Defendant, Daniel Francis, is personally liable as a result of the alleged personal guaranty

found on Schedule B of the Equipment Lease Agreement. The Court finds that the Personal Guaranty section is ambiguous; and, given the fact that the Plaintiff prepared the form agreement, the ambiguities must be construed against the Plaintiff. The positioning of the Personal Guaranty section under Schedule B is confusing, and the fact that the Defendant, Daniel Francis, signed in his capacity as President of Mulligan's Cart, is squarely in conflict with the Plaintiff's position that Mr. Francis intended to be personally liable under the Equipment Lease Agreement in the event of a breach. The testimony of Defendant, Daniel Francis, was credible, and the Court finds that it was not his intention to be personally liable under the Equipment Lease Agreement. The fact that he signed in his corporate capacity under the Personal Guaranty section of the Equipment Lease Agreement bolsters this lack of intent. Further, the Court finds that the fact that the signature of Defendant, Daniel Francis, under the Personal Guaranty section was attested to by a Scott Van Sciever, which also supports the Defendant's position that he was signing the subject lease agreement only in his corporate capacity.

Although not dispositive of the issue before the Court, it is troublesome that the Plaintiff is unable to locate a fully executed copy of the Equipment Lease Agreement. The Court has serious doubts as to whether the subject agreement was ever actually executed by the Plaintiff. This fact serves to suggest that the Plaintiff, in its haste to make a deal with Mulligan's Cart, paid little attention to detail, and, as a result, produced a contract fraught with flaws and ambiguities that must be construed against the Plaintiff.

As stated above, there is no dispute that Defendant, Mulligan's Cart, breached the Equipment Lease Agreement in question, and that, as such, the corporate entity is liable for the breach. In reviewing the issue of damages as to Defendant, Mulligan's Cart, the Court

finds that the claim of the Plaintiff, as set forth on Plaintiff's Exhibit #5, should be reduced by the sum of \$22,337.01, representing monthly service charges which are not chargeable against Defendant, Mulligan's Cart, and lease liability in the amount of \$4,380.24, which is an error acknowledged by the Plaintiff at trial. Therefore, the Court finds that it is proper to enter judgment against Defendant, Mulligan's Cart, only in the amount of \$48,040.92. The Complaint for relief as to Defendant, Daniel Francis, is denied in its entirety.

ENTERED: March \_\_\_\_\_, 2000.

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GERALD D. FINES  
United States Bankruptcy Judge

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Debtor. )  
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PROFESSIONAL TURF )  
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Plaintiff, )  
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vs. ) Adversary Case No. 99-9055  
)  
MULLIGAN' S CART and )  
DANIEL FRANCIS, )  
)  
Defendants. )

O R D E R

For the reasons set forth in an Opinion entered on the \_\_\_\_ day of March 2000;

IT IS HEREBY ORDERED that:

A. The Complaint filed by the Plaintiff, Professional Turf Specialties, Inc., on June 10, 1999, is ALLOWED as to its prayer for relief against Defendant, Mulligan's Cart;

B. Judgment is entered against Defendant, Mulligan's Cart, in the amount of \$48,040.92; and,

C. The Complaint filed by the Plaintiff, Professional Turf Specialties, Inc., on June 10, 1999, as to Defendant, Daniel Francis, is DENIED and dismissed with prejudice.

ENTERED: March \_\_\_\_, 2000.

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GERALD D. FINES

United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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Deputy Clerk